competition that has created so many problems in the interLATA marketplace, does not yet exist in the intraLATA marketplace. Moreover, because, unlike interLATA service providers, the BOCs continue to be treated as "dominant" carriers in their provision of intraLATA interstate services, their rates for those services are constrained by price cap ceilings. This form of direct rate regulation obviates any need for alternative measures to protect consumers from excessive rates.

The Commission has recognized in virtually every order since enactment of the 1996 Telecommunications Act that the purpose of that Act was to establish a procompetitive *deregulatory* national policy framework. The *Second Report* itself cites this mandate.[17] Surely, the Commission could not reconcile this mandate with a requirement that LECs adhere to the disclosure requirements of the *Second Report* in their provision of services that already are subject to price cap regulation. Far from being deregulatory, any such requirement would epitomize excessive regulation.

B. Application of the *Second Report* to IntraLATA Service Would Be Anti-Competitive in Effect.

Not only would application of the *Second Report* to intraLATA services be unnecessary (and at odds with the Administrative Procedure Act), it would also undermine the Commission's pro-competitive goals and policies. Under section 251(b)(3) LECs must provide nondiscriminatory access to operator services by

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[17] *Second Report* at para. 6.

competing providers.[18] In addition, the Commission has held that operator services are network elements to which ILECs must provide access on request where technically feasible. Moreover, under section 251(c)(4), ILECs, such as Ameritech, must offer for resale its retail telecommunications services - including its intraLATA services - at wholesale rates. Through the operation of these provisions, other telecommunications carriers currently use Ameritech operators to provide their own 0+ intrastate intraLATA service in Michigan, Illinois, and Wisconsin. When dialing parity is implemented for intraLATA interstate service (after Ameritech obtains section 271 authority) CLECs also will use Ameritech operators to originate 0+ interstate intraLATA traffic.

If the Commission holds that the *Second Report* does, indeed, apply to intraLATA interstate services, Ameritech could only comply with the disclosure requirements adopted therein by instructing callers to press "0" for rate information and then routing the call to a live operator. Ameritech is not technically capable of providing rate quotes on an automated basis and has been informed by its operator service switch vendor that the software necessary to implement this capability would cost tens of millions of dollars and take a considerable amount of time to develop, test, and implement. It is thus not a viable or cost-effective option, particularly given that only about one percent of Ameritech's 0+ traffic is intraLATA interstate.

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[18] *See* 47 U.S.C. § 251(b)(3). *See also* 47 CFR § 51.217.

Because, however, Ameritech operators handle 0+ traffic initiated, not only by Ameritech customers, but by the customers of other carriers as well, Ameritech's operators cannot comply with the rate disclosure requirements of the *Second Report* unless they know the identity of the carrier being used by the customer placing the call; otherwise, Ameritech operators would end up quoting Ameritech rates to the customers of Ameritech's competitors.

Ameritech operators do not currently have this information unless the call is received on a dedicated trunk group. Thus, in order to comply with the requirements of the *Second Report* Ameritech operators would have to ask callers seeking rate information to identify their carrier. Even then, Ameritech operators still would not be in a position to provide rate information to the customers of carriers who use Ameritech operators to provide their own services because Ameritech is not privy to the retail rate structures of those carriers. In order for those carriers to comply with the requirements of the *Second Report*, they would thus either have to provide Ameritech with rate tables or instruct Ameritech operators to transfer callers to some other number. Either way, the carrier is effectively penalized: in the first, instance, it would have to provide sensitive rate information to its competitor, in the second, it would effectively be prevented from providing a rate quote service that is at parity with that of the ILEC. Indeed, if a caller is transferred from a LEC operator back to the carrier, the carrier's representative would have to re-solicit all relevant information (*e.g.*, the dialed number) from the caller, and then, if the caller wished to place the call

after receiving such information, the caller would have to hang up and re-dial. Given that process, the caller would have been better off simply making a separate call to the 0+ carrier in the first place.

This problem is not merely a future problem that will arise only after dialing parity is implemented for interstate intraLATA traffic. It would exist from the start in areas where Ameritech (and other LECs) have implemented intrastate intraLATA dialing parity. That is because Ameritech's operator switches (which are used by a number of other LECs as well) cannot currently separate interstate intraLATA traffic from intrastate intraLATA traffic for purposes of informing customers how to obtain a rate quote. Thus, in order to comply with the *Second Report*, Ameritech would have to provide the required notification on all intraLATA 0+ calls, including intrastate intraLATA calls emanating from areas with intraLATA toll dialing parity. In those areas, the required announcement would be heard, not only by Ameritech's own customers, but by the customers of other carriers that use Ameritech operator services. Thus, to the extent a customer sought rate information in response to the announcement, Ameritech operators would not know whose customer it was, or what rate should apply.

For this reason, and the reasons cited above, the Commission must clarify or revise the *Second Report* by holding that the requirements established therein do not apply to intraLATA services. Indeed, to the extent the "reseller problem" discussed above extends beyond LECs to the interexchange industry,

as well, it may be necessary for the Commission to rethink this requirement, even as applied to interLATA services.[19]

C. To the Extent the Commission Retains the Disclosure Requirements of the *Second Report*, It Should Clarify That Those Requirements do not Require Disclosure of Surcharges or PIFs For Which A Carrier Does Not Bill or Which Are Not Expressly Authorized by Contract.

To the extent the Commission retains the disclosure requirements of the *Second Report*, it should clarify that those requirements do not require disclosure of surcharges or PIFs for which a carrier does not bill or which have not been expressly authorized in a presubscription contract between the carrier and the aggregator. This clarification would be useful because the *Second Report* is not entirely clear and could be construed to require disclosure of any surcharge or PIF assessed by an aggregator, regardless of whether the OSP has expressly or implicitly permitted such charges through contract or by billing for them. Thus, for example, while paragraph 24 states "[o]ur information disclosure rules . . . require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that it has permitted in the applicable PIC agreement with an aggregator," paragraph 19 appears to require disclosure of "the specific applicable surcharge, or the maximum surcharge that could be billed at that aggregator location."

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[19] Counsel for Ameritech notes that he uses a reseller of Sprint long-distanace service at his home telephone. On the night of April 8, counsel dialed 00 and asked the Sprint operator whether she could identify the reseller he was using or provide rate information on behalf of that reseller. The operator responded negatively to both inquiries.

To the extent the Commission did not intend to limit this requirement to disclosure of actual or maximum PIFs which an OSP has authorized through contract or by billing, Ameritech can say unequivocally that it cannot comply with this requirement. In rejecting arguments that any disclosure requirement should not extend to surcharges or PIFs, the *Second Report* states: "Only PIFs that an OSP has specified or permitted in its PIC agreement with a particular aggregator must be reflected in such tariffs. Our information disclosure rules similarly require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that is has permitted in the applicable PIC agreement with an aggregator."[20] Ameritech, and other LECs, however, do not file section 226 tariffs; they file section 203 tariffs, which do not include surcharge or PIF information. Moreover, Ameritech does not, as a general matter, offer intraLATA toll service to aggregators pursuant to contracts, much less contracts that purport to address permissible surcharges and PIFs. On the contrary, Ameritech is the default carrier for intraLATA toll interstate traffic; it provides its service under tariff, not individually negotiated contracts. Thus, in order to comply with the Commission's requirement, Ameritech would have to canvass every single aggregator in LATAs that cross state lines in order to determine what, if any, surcharges or PIFs they impose. That is obviously not practicable.

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[20] *Second Report* at para. 24. This reference to "nondominant OSPs" would appear to corroborate Ameritech's belief that the *Second Report* does not apply at all to intraLATA interstate 0+ services (which are provided only by dominant carriers).

Nor is Ameritech in a position to know the surcharges that other carriers might apply to a call. For example, if a caller places an intraLATA interstate call over Ameritech's network and bills that call to a third number, the LEC serving that third number might impose its own billing surcharges. The same would be true if the call were billed to, for example, another LEC's calling card. Ameritech could not possibly be in a position to know the surcharges that might be assessed by the hundreds of LECs throughout the country. It does not bill these surcharges, nor does it have contracts with each and every LEC that address these matters.

In an *ex parte* meeting, Commission staff suggested that Ameritech could tariff a surcharge and PIF limitation. Wholly apart from whether it would be reasonable for Ameritech, as the default intraLATA interstate carrier, to select arbitrarily a maximum permissible surcharge or PIF for all aggregators in the Ameritech region, and for all LECs that perform billing functions on a call, Ameritech would certainly not be in a position to enforce any such limitation as to entities that have not agreed to such limitations. Indeed, it is likely that many aggregators and carriers would simply refuse to comply with such a limitation; thus, Ameritech would find itself in a position of providing false assurances to consumers.

Ultimately, if the Commission believes that surcharge and PIF ceilings are appropriate, then the Commission should impose them. It is not up to

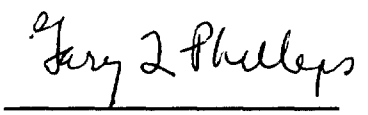
Ameritech and other LECs to do the Commission's work, particularly since that would be a recipe for chaos, with each LEC purporting to set policies for every other LEC, not to mention all of the aggregators in their territory.

For these reasons, if the Commission retains any disclosure requirement that would apply to Ameritech (which, for the reasons noted above, it should not), it should clarify that carriers are required to quote only actual or maximum surcharges or PIFs for which they bill or which they have expressly authorized in an aggregator contract.

IV. CONCLUSION

For the reasons stated above, the Commission must clarify or hold on reconsideration that the *Second Report* does not apply to intraLATA interstate services. If the competitive concerns identified above apply in the interLATA market, as well as the intraLATA market, the Commission should vacate the decision, and issue another Further Notice to consider whether an alternative remedy should be adopted, or whether the continued acceptance of access codes has obviated the need for any further measures.

Respectfully Submitted,



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